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SUKHIDIR KEMAT v. PREMIUM PROAKTIF SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
GAN TECHIONG JC
[CIVIL SUIT NO: WA-22NCvC-239-04-2022]
4 APRIL 2024

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Abstract – *When a judge has granted order in terms of a plaintiff's prayers as pleaded in his amended statement of claim and a sealed judgment contains the exact words of the prayers, the court is functus officio after having issued a sealed judgment in terms of the prayers of the plaintiff. If there is no error in the sealed judgment that can justify any amendment pursuant to O. 20 r. 11 of the Rules of Court 2012, and also no error in the intention of the court in granting a judgment in terms of the plaintiff's prayers to justify any alteration of the sealed judgment, an application to do so would be misconceived.*

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CIVIL PROCEDURE: *Judgments and orders – Sealed judgment – Application to amend – Whether O. 20 r. 11 and O. 92 r. 4 of Rules of Court 2012 applicable – Whether there were clerical mistakes or any accidental slip or omission – Whether amendments sought attempt to improve sealed judgment – Whether there was error in sealed judgment – Whether court functus officio*

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The plaintiff's claim was based on an oral agreement, pleaded as having been made sometime in May 2016 whereby the plaintiff assisted the defendant to submit the defendant's application to the then Prime Minister Dato' Sri Najib Tun Razak for approval of 'permit terbuka mengimport kenderaan' and the defendant was to give the plaintiff interest of 30 % from any revenue from the motor vehicle import permit. The plaintiff's prayers, as pleaded in his amended statement of claim, was allowed by this court's predecessor judge after a full trial. The plaintiff's solicitors proceeded to draft and extract a sealed judgment in terms of prayers (1) and (2) of the plaintiff's amended statement of claim, which they had rightly done. Several months after extracting the sealed judgment, the plaintiff filed an application ('encl. 95') pursuant to O. 20 r. 11 and O. 92 r. 4 of the Rules of Court 2012 ('ROC'), to seek an order to amend the second paragraph of the sealed judgment. The plaintiff averred that the sealed judgment failed to reflect the grounds of judgment.

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Held (dismissing encl. 95):

(1) There was nothing in O. 20 r. 11 of the ROC to authorise this court to amend the said sealed judgment because the amendments sought by the plaintiff were neither 'clerical mistakes' nor 'any accidental slip or omission'. Hence, O. 20 r. 11 was clearly inapplicable. As for O. 92 r. 4 which is a general rule on the inherent jurisdiction of the court to prevent injustice, it was also inapplicable. The sealed judgment did correctly reflect the intention of the predecessor judge – which was to

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grant judgment in terms of the plaintiff's prayers in his amended statement of claim. If, after having amended his statement of claim before the trial commenced, the prayers were still incorrect or insufficient, O. 92 r. 4 does not empower this court to overcome trite law: that the court is *functus officio*. The plaintiff's application was thus misconceived. (paras 8 & 9)

(2) The sealed judgment was drawn up per the prayers in the amended statement of claim after a full trial was held. It would not come under any of the exceptions permissible in law. The amendments sought by the plaintiff were, in essence, an attempt to improve the sealed judgment, to order the defendant to pay to the plaintiff 30% of the defendant's revenue from its vehicles import business from year 2019 to date, instead of proceeding to execute the sealed judgment as it was. If the plaintiff had intended to seek payment of an exact percentage of 30% of the defendant's revenue from the year 2019, the onus was on the plaintiff to plead the same in the prayers of his amended statement of claim. Since the predecessor judge had granted order in terms of the plaintiff's prayers as pleaded in his amended statement of claim and the sealed judgment contained the exact words of the prayers, this court was *functus officio* after having issued a sealed judgment in terms of the plaintiff's prayers. (para 11)

(3) The defendant's appeal against the sealed judgment was still pending at the Court of Appeal. It would be patently unjust to allow any amendment to the sealed judgment – which would allow the plaintiff to improve on his case post-judgment – while the defendant's appeal against the said judgment was pending at the Court of Appeal. (para 13)

(4) There was no error in the sealed judgment that could justify any amendment pursuant to O. 20 r. 11 and also no error in the intention of the court in granting a judgment in terms of the plaintiff's prayers (as prayed for in his amended statement of claim) to justify any alteration of the sealed judgment. There was no power to override the trite rule that this court was *functus officio* after having allowed the plaintiff's prayers and sealed the fair copy of the judgment filed by the plaintiff. (para 14)

Case(s) referred to:
Hock Hua Bank Bhd v. Sahari Murid [1980] CLJU 92; [1980] 1 LNS 92 FC ***(refd)***
Woolley Development Sdn Bhd v. Stadco Sdn Bhd (No 2) [2010] 7 CLJ 83 CA ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 20 r. 11, O. 92 r. 4

For the plaintiff - Ivan Teng Jun Hong; M/s Fahri, Azzat & Co
For the defendant - Hasshahari Johari Mawi & Mahzal Nazrin Mahat; M/s Hasshahari & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Gan Techiong JC:

Introduction

[1] An 'answered prayer' might not be a good thing if one had not prayed for the right thing – as the plaintiff in this case had probably realised. "Prayers" in the context of court proceedings, have nothing to do with religion. They are the remedies/orders that a plaintiff is praying (applying) for a court to order in his favour, and are usually pleaded in the final paragraph of statements of claims filed in civil suits.

[2] In this case, the plaintiff's claim was based on an oral agreement, pleaded as having been made sometime in May 2016 whereby the plaintiff assisted the defendant to submit the defendant's application to the then Prime Minister Dato' Sri Najib bin Tun Razak for approval of "permit terbuka mengimport kenderaan" and the defendant was to give the plaintiff interest (kepentingan) of 30% from any revenue from the motor vehicle import permit.

[3] The plaintiff's prayers, as pleaded in his amended statement of claim, was allowed on 26 September 2023 by my predecessor judge after a full trial. After Justice Rozana Ali Yusoff's decision was pronounced, the plaintiff's solicitors proceeded to draft and extract a sealed judgment in terms of prayers (1) and (2) of the plaintiff's amended statement of claim – which they had rightly done, on 25 October 2023. The relevant part of the sealed judgment dated 26 September 2023 is as follows:

> saksi-saksi yang dikemukakan, **Maka Adalah Pada Hari Ini Dihakimkan** bahawa:
>
> (1) Defendan hendaklah menyediakan suatu akaun hasil yang terjana oleh Defendan daripada permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini;
>
> (2) Defendan hendaklah membayar kepada Plaintif semua jumlah yang didapati terhutang kepada Plaintif pada pengambilan akaun;
>
> (emphasis added)

[4] There was no clerical error in the said judgment. It contained the exact prayers of the plaintiff's amended statement of claim, as could be seen at para. 21(a) and (b) thereof:

> 21. Oleh Yang Demikian, Plaintif menuntut terhadap Defendan:
>
> (a) Suatu akaun hasil yang terjana oleh Defendan daripada permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini;
>
> (b) Suatu perintah untuk pembayaran oleh Defendan kepada Plaintif semua jumlah yang didapati terhutang kepada Plaintif pada pengambilan akaun;

The Plaintiff's Application (Enclosure 95) To Amend The Sealed Judgment

[5] On 21 March 2024, which was about five months after extracting the sealed judgment dated 26 September 2023, the plaintiff filed his application (encl. 95) pursuant to O. 20 r. 11 and O. 92 r. 4 of the Rules of Court 2012, to seek an order to amend the second paragraph of the sealed judgment dated 26 September 2023, as follows:

> (1) Perintah dalam perenggan (2) Penghakiman bertarikh 26.9.2023 ('**Penghakiman tersebut**') dipinda seperti berikut:
>
> Defendan hendaklah membayar kepada Plaintif **30% daripada hasil yang terjana oleh Defendan daripada perniagaan permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini** pada pengambilan akaun.
>
> (emphasis added)

[6] The affidavit in support of the said application was affirmed by the plaintiff's solicitor, who averred, *inter alia*, that the sealed judgment failed to reflect the grounds of judgment.

> 8. Saya sesungguhnya menyatakan bahawa kegagalan Penghakiman Mahkamah untuk mencerminkan Alasan Penghakiman dari segi tersebut adalah suatu keciciran atau peninggalan oleh Plaintif yang tidak sengaja, dan ia wajar diperbetulkan melalui Permohonan ini untuk menghapuskan sebarang kekeliruan dan/atau keraguan berkenaan dengan penghakiman tersebut, dan untuk memastikan bahawa Penghakiman Mahkamah mencerminkan dengan setepat-tepatnya perintah-perintah yang dihakimi oleh Mahkamah yang Mulia ini.

Analysis Of The Facts And Law

[7] Though the plaintiff's application (encl. 95) was heard together with two other applications, *ie*, encl. 77 filed by the plaintiff and encl. 82 filed by the defendant, I shall only be stating my grounds for deciding to dismiss the plaintiff's said application (encl. 95) because the plaintiff has filed an appeal only regarding encl. 95.

[8] I am of the view that the plaintiff's application, made under O. 20 r. 11 and O. 92 r. 4 of the Rules of Court 2012, was misconceived. Order 20 r. 11, which is commonly referred to as "the slip rule" states:

> **Clerical mistakes** in judgment or orders, or **errors** arising therein from any **accidental slip or omission**, may at any time **be corrected** by the Court by a notice of application without an appeal.
>
> (emphasis added)

[9] With respect, there is nothing in O. 20 r. 11 to authorise this court to amend the said sealed judgment because the amendments sought by the plaintiff (in encl. 95) were neither "clerical mistakes" nor "any accidental slip or omission". Hence, O. 20 r. 11 was clearly inapplicable. As for O. 92 r. 4 which is a general rule on the inherent jurisdiction of the court to prevent injustice, I am of the view that it was also inapplicable in this case. As pointed out above, the sealed judgment did correctly reflect the intention of

my predecessor judge – which was to grant judgment in terms of the plaintiff's prayers in his amended statement of claim. If, after having amended his statement of claim before the trial commenced, the prayers are still incorrect or insufficient, O. 92 r. 4 does not empower this court to overcome trite law: that the court is *functus officio*.

[10] In the oft-quoted judgment of the Federal Court in *Hock Hua Bank Bhd v. Sahari Murid* [1980] CLJU 92; [1980] 1 LNS 92; [1981] 1 MLJ 143, it was held as follows:

> *Clearly the court has no power under any application in the same action to alter vary or set aside a judgment regularly obtained after it has been entered or an order after it is drawn up, except under the slip rule* in Order 28 rule 11 Rules of the Supreme Court 1957 (Order 20 rule 11 Rules of the High Court 1980) so far as is necessary to correct errors in expressing the intention of the court: *Re St Nazaire Co* 12 Ch D 88, *Kelsey v. Doune* [1912] 2 KB 482; *Hession v. Jones* [1914] 2 KB 421, *unless it is a judgment by default or made in the absence of a party at the trial or hearing*.
>
> (emphasis added)

[11] As highlighted above, the sealed judgment was drawn up per the prayers in the amended statement of claim after a full trial was held. It would not come under any of the exceptions permissible in law – as enunciated in *Hock Hua Bank Bhd v. Sahari Murid* (*supra*). The amendments sought by the plaintiff were, in essence, an attempt to improve the sealed judgment, to order the defendant to pay to the plaintiff 30% of the defendant's revenue from its vehicle import business from year 2019 to date, instead of proceeding to execute the sealed judgment as it is. If the plaintiff had intended to seek payment of an exact percentage of 30% of the defendant's revenue as from year 2019, the onus was on the plaintiff to plead the same in the prayers of his amended statement of claim. Since my predecessor had granted order in terms of the plaintiff's prayers as pleaded in his amended statement of claim and the sealed judgment contained the exact words of the prayers, I am of the view that this court is *functus officio* after having issued a sealed judgment in terms of the plaintiff's prayers (as prayed for in his amended statement of claim).

[12] The importance of pleading accurately with sufficient particulars was emphasised by the Court of Appeal in *Woolley Development Sdn Bhd v. Stadco Sdn Bhd (No 2)* [2010] 7 CLJ 83; [2011] 6 MLJ 111. The Court of Appeal allowed Woolley's appeal and set aside a default judgment on the ground that a judgment that failed to state its subject matter with certainty is a nullity. Abdul Malik Ishak JCA (as he then was) writing for the Court of Appeal pointed out as follows:

> [5] It is apparent that the said judgment failed completely to state the subject matter of the judgment. Though we were only concerned with the part of the judgment against the second defendant, it is pertinent to point out that the part of the judgment against the first defendant also did not state its subject matter with certainty.

[11] As expounded above, the Federal Court ruled that it was not permissible to look at extrinsic evidence to attempt to resolve ambiguities in a judgment. *This is actually common sense because a judgment ought to, on the face of it, be clear enough to enable compliance. In Tuan Hj Ahmed the Federal Court held that the judgment which failed to define the calculation of interest with certainty was a nullity and could be set aside at any time ex debito justitiae.*

(emphasis added)

Conclusion

[13] Further, the defendant's appeal against the sealed judgment is still pending at the Court of Appeal. It would, in my view, be patently unjust to allow any amendment to the sealed judgment – which would allow the plaintiff to improve on his case post-judgment – while the defendant's appeal against the said judgment is pending at the Court of Appeal.

[14] I would conclude with the following summary. I found no error in the sealed judgment that could justify any amendment pursuant to O. 20 r. 11, and also no error in the intention of the court in granting a judgment in terms of the plaintiff's prayers (as prayed for in his amended statement of claim) to justify any alteration of the sealed judgment under the limited exceptions set out by the Federal Court in *Hock Hua Bank Bhd v. Sahari Murid* (*supra*). There is no power to override the trite rule that this court was *functus officio* after having allowed the plaintiff's prayers and sealed the fair copy of the judgment filed by the plaintiff on 25 October 2023. Even assuming for a moment that this court was not *functus officio*, I would still have dismissed the plaintiff's application because it would be blatantly unjust to allow any amendment to the said judgment while the defendant's appeal against it is pending at the Court of Appeal.

[15] By reason of the facts and law as set out above, I dismissed the plaintiff's application (encl. 95) which was to amend/alter the sealed judgment dated 26 September 2023.